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CIVIL AND POLITICAL RIGHTS

Human rights and arbitrary deprivation of nationality

Report of the Secretary-General

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Introduction

1. In its resolution 1998/48 of 17 April 1998, entitled "Human rights and arbitrary deprivation of nationality", the Commission on Human Rights called upon all States to refrain from taking measures and from enacting legislation that discriminated against persons or groups of persons on grounds of race, colour, gender, religion, or national or ethnic origin by nullifying or impairing the exercise, on equal footing, of their right to a nationality, especially if that rendered a person stateless, and to repeal such legislation if it already existed. The Commission also urged its appropriate mechanisms and the pertinent United Nations treaty bodies to continue to collect information on the question from all relevant sources and to take account of such information, together with any recommendations thereon, in their reports. The Commission requested the Secretary-General to report on the implementation of the resolution at its fifty-fifth session.

2. In pursuance of this resolution a note verbale was addressed to Governments, on 27 August 1998, and a copy of the resolution was transmitted to the appropriate mechanisms of the Commission and the pertinent United Nations treaty bodies.

3. By 7 December 1998, replies had been received from the Governments of Azerbaijan, Denmark, Estonia, Ghana, Kuwait, Monaco, Portugal, the United Kingdom of Great Britain and Northern Ireland and the United States of America. These replies are summarized or reproduced in the present report. The full texts of Constitutions attached to replies may be consulted in the secretariat.

II. INFORMATION SUBMITTED BY GOVERNMENTS

Denmark

[Original: English]
[22 October 1998]

4. Denmark signed the European Convention on Nationality on 6 November 1997 in Strasbourg. The ratification procedure is expected to be completed during the coming parliamentary session. Arbitrary deprivation of nationality does not occur in Denmark.

Estonia 1/

[Original: English]
[29 September 1998]

5. The fundamental rights, freedoms and duties in the Republic of Estonia are regulated in accordance with Chapter II of the Constitution. The constitutional provisions of articles 8, 9, 12 and 13 are relevant to the content of the resolution.

1/ The full text of the articles referred to may be consulted in the secretariat.

6. In accordance with the Constitution (art. 3), generally recognized principles and rules of international law are an inseparable part of the Estonian legal system. The Constitution also provides (art. 123) that if laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu (Parliament), the provisions of the international treaty shall apply.

7. Conditions and procedures for loss of Estonian citizenship are contained in chapter 6 of the Law of Citizenship (arts. 22 and 26-29).

8. The administrative courts are responsible for the judicial review of public administration (Law on Citizenship, art. 36).

9. Administrative court proceedings are based on the Code of Administrative Court Procedure (arts. 5 and 4).

10. As of today no cases of arbitrary deprivation of nationality have been brought before Estonian courts.

Ghana

[Original: English]
[9 November 1998]

11. Resolution 1998/48 calls up certain considerations, the first of which is the effect it will have on international law as a whole and its particular effect on the principle of State sovereignty.

12. With regard to the effect on international law in general, it raises the question as to whether it would add anything new to the law as it relates to international human rights. In other words, Member States are being called upon to consider whether the right to a nationality can be defined as a human right.

13. In the preamble, the resolution recalls existing international provisions which tend to establish the right to a nationality as a right. The 1948 Universal Declaration of Human Rights, though not formally binding, proclaims the broadest scope of this right in its article 15 by declaring that "everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". In narrow terms, the right to a nationality is mentioned in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, in that it places an obligation on States to guarantee the enjoyment of this right without any racial discrimination. The International Covenant on Civil and Political Rights (1966) also provides a narrow concept of the right by stating that "every child has a right to acquire a nationality" (art. 24.3). This brief right of "every child" is further developed in the 1989 Convention on the Rights of the Child, which provides that the child shall have "the right to acquire a nationality" (art. 7) and that the implementation of this right shall be ensured by States "in accordance with their national law and their obligations under the relevant international instruments".

14. Resolution 1998/48 seeks to introduce innovations into the law relating to international human rights in that it couches the right to a nationality in very broad terms, by affirming the right to a nationality of every human person as an inalienable human right.

15. While a lot is to be said for the right to a nationality as a human right one cannot overlook the other side of the coin, namely the effect of such a right on the principle of State sovereignty.

16. In the Nottebohm Case, (ICJ Reports 1955, p. 23) nationality was defined as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties".

17. In accordance with the principle of public international law, whether or not a person possesses a particular nationality is a question of the internal laws of that State. The principle that every State shall settle, by its own legislation, rules relating to the acquisition or loss of its nationality, is one which affirms the sovereignty of each State, and it must be maintained. The effect of legislation which deprives individuals of their nationality may, however, be prejudicial to other States, particularly with regard to the possibility of the influx of refugees into their territories. Also, deprivation of nationality has certain consequences for the international community, as it is invariably linked with statelessness, a condition which requires other States to grant entry into their territories and to accord specific privileges as provided under the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). In effect, to the extent that it may infringe upon the rights of other States, the discretionary power of a State to deprive nationals of their nationality should not be without limits.

18. In the 1997 European Convention on Nationality, efforts have been made to bridge the divergence between the principle of State sovereignty and any limitations to be placed on it with regard to nationality. Article 3 of this Convention provides that each State shall determine under its own law who are its nationals. The Convention then goes on to affirm that the internal laws of a State shall be accepted by other States insofar as is consistent with international conventions, customary international law and the principles of law generally recognized with regard to nationality. This formulation, which lays emphasis on the State as sovereign, is worthy of some consideration during discussions and debates on resolution 1998/48. In other words, it is hoped that the resolution would not entirely ignore the principle of State sovereignty.

Kuwait

[Original: Arabic]
[30 October 1998]

19. The Kuwaiti authorities wish to state that matters relating to nationality are of great importance to the State insofar as they involve aspects that affect the homeland, as well as considerations concerning the

sovereign entity of the State, its internal and external security and its social and economic situation and circumstances, in addition to the fact that nationality implies a bond of loyalty and a sense of patriotism in the absence of which it becomes necessary and even essential to withdraw citizenship status from a person who has acquired it.

20. Article 4, paragraph 5, and articles 13, 14 and 21 bis of Amiral Decree No. 15 of 1959, as amended, define the circumstances in which Kuwaiti nationality may be lost, withdrawn or forfeited. It is noteworthy that these articles do not specify any racial, ethnic, religious or gender-related grounds on which nationality may be lost, withdrawn or forfeited. Most of the specified grounds relate to the preservation of the country's security, integrity and socio-economic stability in a manner consistent with the principle of equality in regard to rights and obligations as affirmed in article 29 of the Kuwaiti Constitution (All persons are equal in regard to dignity and, in the eyes of the law, have equal public rights and obligations without any discrimination on grounds of sex, origin, language or religion).

Monaco 2/

[Original: French]
[19 September 1998]

21. Information supplied by the Directorate of External Relations of the Principality of Monaco indicates that, under article 18 of the Constitution of Monaco dated 17 December 1962, the circumstances in which a person who has acquired Monegasque nationality by naturalization may be deprived of it are laid down in the law. Loss of Monegasque nationality in any other circumstances may occur only as a result of the intentional acquisition of another nationality or of service unlawfully carried out in a foreign army.

22. These provisions appear in title III of the Constitution, entitled "Fundamental freedoms and rights". They offer a fundamental safeguard against any arbitrary deprivation of nationality, and one which is strictly subject to judicial review.

23. The following items of legislation govern the circumstances in which Monegasque nationality may be acquired or lost:

Act No. 572 of 18 November 1952 concerning the acquisition of Monegasque nationality (arts. 5 and 6);

Act No. 1155 of 18 December 1992 concerning nationality (chaps. III, IV and V, sect. I);

Ordinance No. 10.822 of 22 February 1993 for the application of Act No. 1155 of 18 December 1992 concerning nationality.

2/ The text containing the articles of the Constitution of Monaco may be consulted in the secretariat.

Portugal

[Original: English]
[3 December 1998]

24. Pursuant to article 26 (1) of the Portuguese Constitution, the right to citizenship shall be considered as a fundamental right and recognized to all persons. Paragraph (4) of the same article prescribes that a person may be deprived of citizenship only in cases and under conditions laid down by the law, and never on political grounds.

25. In accordance with the Portuguese Law on Nationality (art. 8), no Portuguese citizen shall be deprived of his or her nationality unless he or she, being a national of another State, declares that he or she does not wish to be Portuguese. Therefore, no arbitrary deprivation of nationality is possible within the Portuguese legal framework.

26. The deprivation of nationality on racial, national, ethnic, religious or gender grounds is strictly prohibited by the principles on which the Portuguese legal system is based, for it would be an obvious violation of the principle of equality, as defined by article 13 (2) of the Portuguese Constitution, which prescribes that "no one shall be privileged, favoured, injured, deprived of any right or exempt from any duty because of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation or social status".

27. Article 1 (1) (d) of the Portuguese Law on Nationality prescribes that all persons born within Portuguese territory shall be granted Portuguese nationality, as long as they do not possess any other nationality. This is an important mechanism to avoid cases of statelessness.

28. The Portuguese Law on Asylum (art. 1 (1)) provides for the granting of asylum to aliens or stateless people persecuted or seriously threatened with persecution as a result of activity exercised in the State of their nationality or habitual residence, in favour of democracy, social and national liberty, peace among peoples, freedom and the right of the human beings. Paragraph 2 of the same article prescribes that any aliens or stateless people who, having a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinions or membership of a particular social group, are unable to or, owing to such fear, are unwilling to return to the State of their nationality or habitual residence shall also be entitled to the grant of asylum.

29. Furthermore, Portugal is a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, to the International Covenant on Civil and Political Rights and to the Convention on the Rights of Child, all of which contain provisions regarding the issue of nationality.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[26 October 1998]

30. Deprivation of nationality is, in the United Kingdom and its Overseas Territories, based firmly on the rule of law. Provision for the withdrawal of British citizenship (BC), British Dependent Territories citizenship (BDTC) and the status of the British National (Overseas) (BN(O)) acquired by registration or naturalization, is made by section 40 of the British Nationality Act 1981 (c. 61) read with article 7 of the Hong Kong (British Nationality) Order 1986 (No. 948).

31. The legislation provides as follows:

(a) A person may be deprived of BC, BDTC or BN(O) status if the registration or naturalization by virtue of which the person became a citizen or national was obtained by means of fraud, false representation or the concealment of any material fact.

(b) A person who acquired BC, BDTC or BN(O) by or as a result of naturalization or registration otherwise than under the British Nationality Acts 1948 to 1964 may additionally be deprived of that citizenship or status if he or she:

(i) Has shown him/herself by act or speech to be disloyal or disaffected towards Her Majesty, or

(ii) Has, during any war in which Her Majesty was engaged, unlawfully traded or communicated with an enemy, or

(iii) Has, within five years of the date of registration or naturalization, been sentenced to imprisonment for at least 12 months and would not, on losing British nationality, become stateless.

(c) The person against whom it is proposed to make an order for deprivation of citizenship has the right to have his or her case considered by a committee of inquiry appointed for the purpose by the Home Secretary.

(d) British nationality may not be withdrawn unless it can be shown that such action is necessary in the public interest

(e) Any direction vested in the executive by the Act is to be exercised "without regard to the race, colour or religion of any person who may be affected by its exercise".

32. There is no provision for the withdrawal of nationality acquired by any other means than registration or naturalization, for example through birth or ancestry. Nor is any provision made for the withdrawal of any of the other forms of British nationality, such as British Overseas citizenship. The

status of British protected person and, in certain circumstances, the status of British subject, is lost automatically if and when the person concerned acquires any other nationality or citizenship.

33. The power to withdraw nationality is regarded very much as one of last resort. It has not been used since the 1981 Act came into force in 1983, and there were only 10 instances of deprivation of citizenship by order of the Home Secretary under its immediate predecessor, the British Nationality Act 1948.

34. The legislation is entirely consistent with the provisions of the Convention on the Reduction of Statelessness.

United States of America

[Original: English]
[9 October 1998]

35. The United States law regarding United States citizenship is not based on race, nationality, ethnic, religious or gender grounds. Qualifying grounds for acquisition of United States citizenship are principally based on birth in the United States, the nationality of one's parents and/or lawful residency in the United States.

36. Section 309 of the Immigration and Nationality Act (INA) establishes different requirements for acquisition of United States citizenship by a child born out-of-wedlock to a United States citizen father, as distinguished from a United States citizen mother. Earlier in 1998, the United States Supreme Court declined to hold that this was unconstitutional, though that decision was based largely on procedural considerations. Thus, gender is not a consideration in loss of nationality cases, but it can matter in acquisition of nationality cases.

37. In accordance with the Fourteenth Amendment to the Constitution of the United States, all persons born within the United States are citizens (except diplomats accredited to the United States and thus not subject to United States jurisdiction). Citizenship cannot be waived nor can it be relinquished by unilateral declaration except as provided by law. Qualified non-citizens may acquire United States citizenship through naturalization in the United States and thereafter their citizenship is similarly protected. United States laws do not permit the arbitrary deprivation of nationality based on race, national origin, ethnic, religious, or gender grounds - the grounds enumerated in resolution 1998/48.

38. Paragraph 3 of resolution 1998/48 calls upon all States to refrain from enacting legislation that nullifies or impairs the right of a person to a nationality or renders a person stateless for reasons related to race, national origin, gender, religion or ethnicity, and to repeal legislation that has that effect. Assuming this does not detract from the right of a country to determine who its citizens are, United States law does not conflict with the intent of the Commission on Human Rights in adopting resolution 1998/48.

The Congress of the United States is vested with the authority to enact legislation concerning United States nationality, and to set criteria for acquisition or loss of United States citizenship.

39. The United States, however, has recognized the right of expatriation as an inherent right of all people. Citizens of the United States can surrender their United States nationality through voluntary performance of a statutorily-specified expatriating act with the intention of relinquishing citizenship. In addition, a person who acquires United States citizenship after birth through naturalization in the United States is subject to loss of United States citizenship. In fact, United States law and policy generally presumes that a United States citizen intends to retain United States citizenship unless the person takes a policy-level position in a foreign Government; is convicted of treason; formally renounces United States citizenship; or expressly states an intention to relinquish United States citizenship.

Revocation of naturalization

40. The United States Government may bring a civil action to revoke a person's naturalization, if that person obtained naturalization illegally or by wilful concealment or misrepresentation of facts material to eligibility for naturalization. That person has a legal right to have the issue resolved in the courts of the United States. The Supreme Court has affirmed that the burden of evidence is on the United States Government to present clear, unequivocal and convincing evidence that the person obtained naturalization improperly. As in any legal action in the United States, the defendant in a naturalization revocation case is afforded all due process, protections and rights of appeal.

Voluntary relinquishment of nationality

41. Section 349 of the INA states that United States citizens are subject to loss of citizenship if they perform certain acts voluntarily and with the intention of relinquishing United States citizenship, such as: naturalizing in a foreign State; taking an oath to a foreign State or its political subdivisions; entering or serving as a commissioned or non-commissioned officer in the armed forces of a foreign State or entering or serving in the armed forces of a foreign State engaged in hostilities against the United States; working for a foreign Government if (a) one has that foreign nationality or (b) a declaration of allegiance is required in accepting the position; formally renouncing United States citizenship before a United States consular officer outside the United States; formally renouncing United States citizenship within the United States (But only within time of war); and committing an act of treason (if there is a conviction).

42. The Department of State has an administrative standard of evidence that United States citizens intend to retain their citizenship when they become citizens of a foreign State, subscribe to routine declarations of allegiance to a foreign State or accept non-policy level employment with a foreign Government.

43. The premise that a person intends to retain United States citizenship is not applicable when the individual: formally renounces United States citizenship before a United States consular officer; takes a policy-level position in a foreign Government; commits treason; or otherwise performs an act that is potentially expatriating by statute, and engages in conduct that compels the conclusion that the individual intended to relinquish United States citizenship. In these cases, a person may lose United States nationality.

Dual nationality

44. When a person is naturalized in a foreign State or otherwise possesses another nationality, and thereafter is found not to have lost United States citizenship, the individual may possess dual nationality, if dual nationality is permissible under the law of the foreign State. The United States does not favour dual nationality as a matter of policy, but does not prohibit it in the United States. Dual citizenship may exist in individual cases, sometimes by operation of laws without regard to the wishes of the individual.

Statelessness

45. The United States recognizes the right of a person to relinquish citizenship and thereby become stateless. The United States, however, also recognizes that fraudulently obtained citizenship may be revoked, even if the individual in question is thereby rendered stateless. If a person voluntarily relinquishes citizenship or has citizenship revoked, loss of nationality can lead to statelessness if the person does not possess a foreign nationality or acquire another nationality subsequent to loss of United States citizenship.

Conclusion

46. United States law does not permit the arbitrary deprivation of nationality based on race, national origin, ethnic, religious or gender grounds. Loss or surrender of United States citizenship is regulated by law, protected by constitutional due process guarantees, and subject to appeal. In fact, United States law and policy generally assume that a United States citizen intends to retain United States citizenship.